

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

VIRTUA-WEST JERSEY HEALTH SYSTEM

Employer

and

Case 4–UC–377

JNESO - DISTRICT COUNCIL 1, INTERNATIONAL  
UNION OF OPERATING ENGINEERS,  
AFL-CIO<sup>1</sup>

Petitioner

**DECISION, ORDER AND CLARIFICATION OF BARGAINING UNIT**

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding,<sup>2</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>3</sup>
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Employer operates acute care medical facilities in Voorhees, Marlton, and Berlin, New Jersey and a non-acute care facility in Camden, New Jersey. The Petitioner currently represents a bargaining unit of approximately 1185 full-time, part-time, and per diem registered nurses (RNs) employed at those facilities and in the Employer's home health care department. The Petitioner seeks to clarify the unit to include the classifications of Outcomes Coordinators and Case Management Technicians, and to exclude the classification of Clinical Resource Managers.<sup>4</sup> The Employer takes the position that the Outcomes Coordinators should

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<sup>1</sup> The name of the Petitioner appears as amended at the hearing.

<sup>2</sup> After the due date for submission of briefs, the Employer and the Petitioner supplemented their briefs by letters dated April 4, 2001 and April 9, 2001, respectively. As the supplemental letter briefs were received after the due date for briefs and special leave was not sought for filing such briefs, they have not been considered herein.

<sup>3</sup> During the hearing, the Employer filed a Motion to Dismiss the petition, which raises the same issues addressed in this Decision. The Hearing Officer referred the Motion for ruling thereon to the undersigned Regional Director. For the reasons discussed herein, the Employer's Motion to Dismiss is hereby granted in part and denied in part.

<sup>4</sup> The parties stipulated that Clinical Resource Manager is a supervisory classification and therefore should be excluded from the unit.

be excluded from the unit because the parties' collective-bargaining agreement and a Side Letter incorporated into the collective-bargaining agreement clearly exclude this classification. The Employer further contends that the Case Management Technician classification should be excluded because it has been historically excluded and because the position does not require an RN license.

On May 8, 1997, the Petitioner was certified as bargaining representative in a unit that, *inter alia*, includes Case Managers.<sup>5</sup> The parties entered into a collective bargaining agreement effective from June 11, 2000 through June 8, 2003. The Recognition Clause of the contract sets forth the collective bargaining unit as:

All non-supervisory and non-managerial full-time, part-time and per diem registered nurses employed by the Employer at its Marlton, Berlin, Camden, and Voorhees acute care hospital facilities and in its home health care department, including registered nurses, care coordinators, enterostomal therapists, clinical educators, clinical nurse specialists, clinical resource coordinators, infection control coordinators, home care coordinators, flight RNs, quality assurance facilitators, case managers, documentation team leaders, antenatal testing unit coordinators, community educators, and home care RNs, but excluding all other West Jersey Health System employees, supervisors, managerial employees, (including outcomes managers), and guards as defined in the Act.

During negotiations, the Employer sought to remove the Case Manager classification from the unit. Although the Petitioner insisted on retaining the classification, the parties agreed that the Employer would create the non-unit classification of "Outcomes Managers". In addition, the parties agree that the then Case Managers would be permitted voluntarily to seek positions outside the bargaining unit as Outcomes Managers. The parties memorialized their agreement in a Side Letter, dated August 16, 2000, which they made part of the collective-bargaining agreement. The Side Letter states, *inter alia*, that,

It is agreed and understood that Outcomes Managers will not be included within the bargaining unit. It is understood, further, that the creation of the position of Outcomes Manager is intended to include the responsibilities of Case Managers and other duties in the interest of management. It is understood, further, that individuals currently employed as Case Managers will have an opportunity to seek positions outside the bargaining unit as Outcomes Managers. Employees

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<sup>5</sup> The certified unit was as follows:

All full-time and regular part-time registered, graduate and pool/per diem nurses employed by the Employer at its Marlton, Berlin, Camden, Voorhees, and Gibbsboro, New Jersey facilities, including registered nurses, care coordinators, enterostomal therapists, clinical educators, clinical nurse specialists, clinical resource coordinators, outcome research coordinators, case managers, infection control coordinators, infection control practitioners, home care coordinators, flight RNs, q.a. facilitators, documentation team leaders, antenatal testing unit coordinators, community educators, and home care RNs, but excluding all other employees, supervisors and guards as defined in the Act.

The Employer refused to bargain with the Petitioner, and the Board found that the Employer thereby violated Section 8(a)(1) and (5) of the Act. The Employer petitioned for review of this decision with the United States Court of Appeals for the Third Circuit, and the Court denied this petition in a Judgment dated June 25, 1998.

who elect to remain as Case Managers will be paid on an hourly basis in accordance with the terms of the collective bargaining agreement. It is further agreed and understood that positions vacated through attrition will not be replaced.

On about October 10, 2000, two of the Employer's officials met with the Employer's then 24 Case Managers and announced that the Employer had created Outcomes Manager and Clinical Resource Manager positions. The Employer presented the Case Managers with the Outcomes Manager job description, as well as a newly revised Case Manager job description, and explained that all Case Managers were permitted to apply for the Outcomes Manager position. At the meeting, the employees expressed a preference for the job title of Outcomes Coordinator rather than Outcomes Manager. The Employer subsequently changed the job title but did not change the position in any other respect.<sup>6</sup> Approximately 15 Case Managers chose to become Outcomes Coordinators. Three Case Managers chose to remain as bargaining unit members in that classification.

Case Managers are responsible for overseeing their assigned patients' progress by coordinating each patient's care with his or her doctor and insurance company and ensuring that the medical documentation is accurate and supports the prescribed care. According to the position summary set forth in the Case Manager's job description:

As part of the Case Management Team, the Case Manager is responsible for promoting quality, cost effective health care delivery for their specified patient caseload through collaboration with physicians, nursing, and ancillary services. Combining clinical expertise with the knowledge of medical appropriateness, the Case Manager ensures appropriate clinical documentation is used to support the severity of illness and intensity of service. Serves as a liaison between Virtua and community based agencies and institutions, to facilitate the appropriate continuity of care.

The Outcomes Coordinator job description summary states:

As part of the Case Management Team, the Outcomes Coordinator is responsible for promoting quality, cost effective health care delivery for their specified patient caseload through collaboration with physicians, nursing, and ancillary services. Responsible for the assessment, planning and initiation of ongoing patient and family needs for their designated caseload. Provides significant communication to patient, patient family and other members of the health care team.

The record shows that the Outcomes Coordinator is responsible for all of the Case Manager's duties, as well as for additional responsibilities.<sup>7</sup> Specifically, the Outcomes

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<sup>6</sup> There is no dispute that the Outcomes Coordinator is the new name for the Outcomes Manager position.

<sup>7</sup> The classification does not require an RN license, but the record suggests that most of the current Outcomes Coordinators are RNs.

Coordinator has an increased role in planning patient care along with patients and their families, as well as some financial and other resource management. Unlike Case Managers, Outcomes Coordinators are responsible for balancing the allocation of financial resources to the patients' care, and with moving patients through the hospital as quickly as possible without compromising patient care. For example, if a patient is uninsured, and medication would enable the patient to leave the hospital rather than remaining at the hospital's cost, the Outcomes Coordinator could authorize the medication expenditure after consulting with the patient's physician. A Clinical Resource Manager might review such a decision.

The Employer does not currently have a Case Management Technician job classification. The Employer recently considered, but did not change, the title of the Utilization Review Technician to Case Management Technician. The Utilization Review Technician transmits information from the Case Management Department to the patients' insurance companies. While the current Utilization Review Technician is an RN, the position requires the employee to be a licensed practical nurse (LPN). The Utilization Review Technician classification has existed unchanged since at least July 1998, and was not included in either the certified or contractual unit.

When parties execute a collective bargaining agreement knowing that a classification of employees has been included or excluded from the bargaining unit, the Board, as a general rule, will not permit one of them, by means of a unit clarification proceeding, to effect a change in the definition of the bargaining unit. *Monongahela Power Company*, 198 NLRB 1183 (1972); *Wallace-Murray Corporation*, 192 NLRB 1090 (1971). As the Board recently reiterated in *Bethlehem Steel*, 329 NLRB No. 32 (1999), slip op. at 2, "[W]here a position or classification has historically been excluded from or included in the unit, and there have not been recent, substantial changes that would call into question the placement of the employees in the unit, the Board generally will not entertain a petition to clarify the status of that position or clarification, regardless of when in the bargaining cycle the petition is filed." Unit clarification is not appropriate for upsetting an agreement of a union and employer even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons. *Union Electric Co.*, 217 NLRB 666, 667 (1975).<sup>8</sup> In this case, the Side Letter, which both parties executed, definitively and unambiguously excluded the Outcomes Manager position from the unit. The Outcomes Coordinator classification is the same as the Outcomes Manager position, but for the title change.

Inasmuch as the unit described in the collective-bargaining agreement, includes "all non-supervisory and non-managerial RNs," the Petitioner contends that it therefore includes the Outcomes Coordinators. The Petitioner further contends that during negotiations for the collective-bargaining agreement it only agreed to exclude the Outcomes Manager classification from the unit if it was a management position.<sup>9</sup> Additionally, the Petitioner contends that the

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<sup>8</sup> The Board will clarify a unit to exclude an historically included classification where the petitioner establishes a statutory basis for the exclusion, such as supervisory status. See, e.g., *Shop Rite Foods*, 247 NLRB 883 (1980). Further, the Board will consider a petition to confirm a historical exclusion where a pending grievance may result in an arbitration award inconsistent with Board policy. *Ziegler, Inc.*, 333 NLRB No. 114 (2001), *Williams Transportation*, 233 NLRB 837 (1977). These exceptions do not apply to this case.

<sup>9</sup> The Employer contends, to the contrary, that the Petitioner did not place this limitation on the agreement. Inasmuch as the parties' discussions leading up to the collective-bargaining agreement's and Side Letter's execution are not determinative of the results in this case, this Decision will not detail these discussions.

Recognition Clause and Side Letter both indicate that the parties intended that the position be managerial. In this regard, the Petitioner contends that the unit description's exclusion of "managerial employees (including outcomes managers)" indicates that the position is managerial and that the Side Letter's statement that the Outcomes Manager position, "is intended to include the responsibilities of Case Managers *and other duties in the interests of management* (emphasis added) indicates that the Outcomes Coordinators are managers.

The Petitioner's contentions are without merit. The first sentence of the Side Letter unambiguously states, "It is agreed and understood that Outcomes Managers will not be included within the bargaining unit." The later statement in the letter that the position, "is intended to include the responsibilities of Case Managers and other duties in the interest of management" does not serve to qualify or detract from the first sentence. Thus, the Side Letter does not exclude Outcomes Managers from the unit only if they are non-managerial employees; it unconditionally excludes all Outcomes Managers. The collective-bargaining agreement also specifically excludes Outcomes Managers from the bargaining unit. With respect to any statements made during negotiations, evidence of oral agreements may not vary the provisions of a written collective bargaining agreement that is valid on its face. *NDK Corp.*, 278 NLRB 1035 (1986). Thus, regardless of whether the Petitioner's representative stated that it would only agree to exclude Outcomes Managers if they were managers, the language of the collective-bargaining agreement and Side Letter are determinative. Accordingly, the parties' agreement may not be altered by a Unit Clarification petition, and the petition is denied with respect to this classification.<sup>10</sup>

The Petitioner contends the Case Management Technician (or Utilization Review Technician) classification should be included in the unit because an RN currently serves in this capacity. The evidence demonstrates that whether the position is called Case Management Technician or Utilization Review Technician, the position has existed unchanged since at least 1998, and it was not included in the certified or contractual unit. Accordingly, as the position has been excluded from the unit, the petition is denied with respect to the Case Management Technicians.<sup>11</sup>

I find that as stipulated by the parties, the newly created classification of Clinical Resource Manager is a supervisory classification and is therefore excluded from the bargaining unit. *Shop Rite Foods*, 247 NLRB 883 (1980).

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<sup>10</sup> If it were necessary to determine the managerial status of the Outcomes Coordinators, I find that the individuals in this classification do not help formulate and effectuate management policies, and are not managerial employees. The Employer asserts that the Outcomes Coordinators are managerial employees based on their authority to allocate the Employer's financial resources, i.e., within the confines of a physician's orders, these employees may allocate resources in a manner that saves the Employer money. Such decisions may be overseen by the Outcomes Coordinator's immediate supervisor. This limited discretion does not establish the Outcomes Coordinators to be managerial employees who "exercise discretion within, or even independently of, established employer policy and . . . [are] aligned with management," as required to be found managerial. *NLRB v. Yeshiva University*, 444 U.S. 672, 682 (1980). See *Triad Management Corp.*, 287 NLRB 1239 (1988).

<sup>11</sup> I note as did the concurring Board Members in *Bethlehem Steel*, *supra*, slip op. at 2, that whether this petition is entertained on its merits or dismissed in part, the result is identical, i.e., a continuation of the historic exclusion of these two disputed classifications.

Accordingly, the petition is dismissed to the extent it seeks inclusion of Outcomes Coordinators and Case Management Technicians and the petition is granted to exclude the Clinical Resource Manager classification from the unit.<sup>12</sup>

### **ORDER**

**IT IS HEREBY ORDERED** that the petition filed herein be, and it hereby is, dismissed as to the proposed inclusion of Outcomes Coordinators and Case Management Technicians. The petition is granted and the unit is clarified to exclude Clinical Resource Managers.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **July 13, 2001**.

Signed: June 29, 2001

at Philadelphia, PA

/s/

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DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four

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<sup>12</sup> Consistent with this conclusion, the Employer's Motion to Dismiss the Petition is granted in part and denied in part.